



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10445347

Date: MAY 12, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a social work coordinator, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. However, the Director also found that the record did not establish eligibility under any prong of the *Dhanasar* framework, all of which must be satisfied. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described his proposed endeavor as “coordinat[ing] social work activities of church in a professional way, in the interest of the state.” The record contains an employment offer letter from the [REDACTED] located in [REDACTED] Maryland; therefore, the state referenced by the Petitioner appears to be the state of Maryland. In response to the Director’s request for evidence, the Petitioner elaborated his proposed endeavor as follows:

- To draw up a program on [s]ocial [w]ork [s]ervice [d]elivery.
- To set up mechanisms to ensure structured social work service coordination.
- Have [i]nstitutional framework as it affect [sic] the practice of [s]ocial [w]orks within our scope.
- To strengthen rehabilitation programs of the church from professional [sic] perspective.
- To have an overview of professional practices in the past, present and in future with a view to delivering better services to beneficiaries.
- To liaise with relevant government authorities in ensuring that best practices are upheld.
- To add value to the traditional functions of [s]ocial [w]ork in the system.

On appeal, the Petitioner asserts that the Petitioner’s social work coordination “will be of benefit to the broader American population and his activities will not be confined to Christians alone.” However, the issue raised by the first *Dhanasar* prong is not whether the Petitioner’s social work coordination would be confined to Christians but rather whether it would be confined to a limited area, such as [REDACTED] Maryland, or limited in scope. In the Petitioner’s own words, the proposed endeavor would be in the interest of the state level, not a broader region. The Petitioner also submits on appeal a letter from the [REDACTED] asserting that the Petitioner’s work would affect the [REDACTED] area.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id* at 889-90.

Even ventures and undertakings that focus on one geographic area of the United States may be considered to have national importance if the proposed endeavor has broader implications, such as significant potential to employ U.S. workers or other substantial positive economic effects. Here, the Petitioner makes no claims that the proposed endeavor will have national or global implications for the field. Moreover, the record does not establish that the proposed endeavor’s breadth would rise to the level of having national importance, nor does it establish that it may provide substantial positive economic effects to a region of the United States. The record does not establish that the endeavor would result in process improvements that would have national or even global implications in the field of social work, that the endeavor would have significant potential to employ U.S. workers, or other factors of national importance.

In summation, the Petitioner has not satisfied the first *Dhanasar* prong.³ We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

³ Because we conclude that the record does not satisfy the first *Dhanasar* prong, which is dispositive, we need not address the Petitioner’s further assertions on appeal regarding the second and third prongs.